IN THE HIGH COURT OR UTTARANCHAL AT NAINITAL

Writ Petition No. 86 (S/B) of 2002

The Bazpur Co-operative Sugar Factory Ltd.,
Through its General Manager,
Bazpur, Distt. U.S. Nagar, Uttaranchal

..... Petitioner

Versus

1. Sarbu S/o Sri Babu, Ex-Mill House Cooli, Sugar Factory Colony of the Bazpur Cooperative Sugar Factory Ltd., Bazpur, Distt. U.S. Nagar, Uttaranchal
2. Dy. Labour Commissioner, Kumaon Region, Haldwani/Prescribed Authority, Distt. Nainital
3. State of Uttaranchal, through Labour Secretary, Government of Uttaranchal, Dehradun

.....Respondents

Sri R.K. Raizada, learned counsel for the petitioner.
Sri Vipul Sharma, learned counsel for Respondent No.1
Sri K.P. Upadhyaya, learned standing counsel for the respondents No.3.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal,J.

Dated: March 08, 2006

By means of this writ petition, the petitioner has prayed for writ of mandamus to declare the notification issued under Section 3(b) of the U.P. Industrial Disputes Act, 1947, (**hereinafter will be referred to as the Act**) and further a writ of certiorari quashing the impugned order dated 24.12.2001 (Annexure No. 1) passed by Respondent No.2.

2. A perusal of the said notification shows that the notification issued under Section 3(b) of the Act was issued only for a period of one year and it has lost its life, therefore, the vires of the notification is no more required to be gone into. So far as this prayer is concerned, the relief is refused.

3. So far as the second relief is concerned challenging the order dated 24.12.2001 passed by the Regional Deputy Labour Commissioner, Kumaon Region, Haldwani, Nainital by which the Deputy Labour Commissioner has held that the date of birth of the workman is 01.10.1947, this finding has been recorded by the Dy. Labour Commissioner on the basis of the certified copy of the U.P. Admission Register and with other relevant documents. Therefore, the judgment passed by the Dy. Labour Commissioner does not suffer from any illegality or infirmity. Hence, the second prayer is also refused.

4. Learned counsel for the parties agree that the respondent-workman has worked till December, 2001 and he was compulsorily retired in view of the incorrect date of birth, which has now been corrected by the impugned, order and according to the new date of birth, the petitioner will retire in 2007. Learned counsel for the petitioner undertakes to allow the respondent to join with immediate effect and he shall also pay the salary to the petitioner from the date of his joining. The only submission of learned counsel for the petitioner is that for the period he has not worked, he will not be paid back wages because correction of age was at the fag end. In our opinion, it will be appropriate to provide 50% of the salary for that period. It is further made clear that the petitioner shall be paid the full salary from the date of the granting of the stay order by this Court i.e. 15.03.2002 till the date he joins his services.

5. With the aforesaid observation, the petition is disposed of finally.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang